

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGINIA E. MIKAELIAN and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 00-2225; Submitted on the Record;
Issued June 13, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

Appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.³ This burden includes the submission of a detailed

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office of Workers' Compensation Programs as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

On August 3, 1998 appellant, then a 44-year-old letter carrier, filed a traumatic injury claim alleging that she sustained an emotional condition due to her work on July 22, 1998. Appellant later expanded her claim to allege that she also sustained stress due to various work incidents and conditions, to which she was exposed to over a period of time. By decision dated January 22, 2000, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. By decision dated April 12, 2000, the Office affirmed its January 22, 1999 decision. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

With respect to the events of July 22, 1998, appellant alleged that she was assigned to an unfamiliar mail delivery route which was "extremely heavy and back-logged" and that she was "overwhelmed by the amount of work and pressure" placed on her by management. Appellant generally noted that there was "a shortage of help and equipment, forced overtime hours, too much work and expectations for these heavy workloads to be done in too little time." The Board has held that emotional reactions to situations in which an employee is trying to meet her position requirements are compensable.⁷

However, appellant did not provide sufficient evidence to support her assertions regarding this characterization of her work duties or otherwise adequately articulate her claim in this regard. The record contains several detailed statements from appellant's supervisors regarding the events of July 22, 1998, which convincingly refute appellant's assertions which are essentially vague and general in nature. For example, appellant's supervisors indicated that appellant had previously worked the route in question; that she was provided with help to complete the route on July 22, 1998 that she engaged in dilatory tactics to avoid working on that

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ *See Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

date; that she had actually delivered more mail on the day prior to July 22, 1998 and that it was not difficult to deliver the mail on July 22, 1998 as much of it had already been placed in order or was bundled together for delivery to one location.

Appellant alleged that on July 22, 1998 supervisors and coworkers subjected her to “derogatory” comments and that supervisors harassed her by refusing to respond to her concerns. She generally alleged that management “would hang the carriers for any errors made,” that supervisors discriminated against her by wrongly issuing disciplinary actions and that she was constantly “picked on” and “yelled at.” Appellant alleged that she was wrongly escorted from the building three times, that she was improperly suspended on Good Friday and that on one occasion a supervisor improperly disciplined her for asking a question about her work. She claimed that a supervisor wrongly threatened to fire her, that she was harassed for filing a grievance and that she was rudely criticized for her appearance.

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant’s performance of her regular duties, these could constitute employment factors.⁸ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.⁹ In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.¹⁰ Appellant alleged that supervisors and coworkers made statements and engaged in actions, which she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹¹ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant alleged that her work was improperly assigned on July 22, 1998 and that she was improperly monitored and criticized on that date. She alleged that she was often wrongly made to work overtime and generally alleged that work was not properly assigned in a proper manner. Appellant claimed that the employing establishment mishandled her leave requests and her paychecks. She further alleged that the employing establishment wrongly disciplined her on numerous occasions.

Regarding appellant’s allegations that the employing establishment engaged in improper disciplinary actions, wrongly handled her leave requests and paychecks, improperly assigned

⁸ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁰ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹¹ See *William P. George*, 43 ECAB 1159, 1167 (1992).

work duties and unreasonably monitored her activities at work, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹² Although disciplinary actions, leave and paycheck matters, work assignments and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹³ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁴

Appellant did not present sufficient evidence to establish that the employing establishment committed error or abuse with respect to any of the above-described administrative matters. Appellant indicated that she filed grievances with respect to some of these matters but the record does not contain any documents detailing the outcomes. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant further alleged that postal inspectors were present the week of the July 22, 1998 incident and that "management was extremely nervous." In addition to the fact that appellant did not support the factual aspect of this assertion, the Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.¹⁵

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁶

¹² See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹³ *Id.*

¹⁴ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁵ See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

¹⁶ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The April 12, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 13, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member